



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 28 जनवरी, 2016/8 माघ, 1937

हिमाचल प्रदेश सरकार

HIGHER EDUCATION DEPARTMENT

NOTIFICATION

Shimla, the 27th January, 2016

No. EDN-A-Kha(15)-16/2014.—The Notification of even number dated 19-01-2016 published in the e-Gazette on 23-01-2016 is hereby withdrawn as the same has been sent inadvertently.

By order,
(PUSHPA CHAUDHARY),
Deputy Secretary (Hr. Edu.).

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***Shimla, the 21st January, 2016*

No. Sharm (A) 6-3/2014 (Awards).—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr.No.	Case No:	Title of the Case	Date of Award
1.	119/2010	Shri Rajan Kumar V/s M/s SMS Footwear Pvt. Ltd, Baddi.	04-12-2015
2.	59/2012	Shri Raj Pal V/S M/s J.P. Motors Kumarhatti.	10-12-2015
3.	33/2013	Smt Suman Saini V/s M/s Pine Grove School Solan.	12-12-2015
4.	17/2014	Smt Asha Devi V/S M/s Wild Craft India Pvt. Ltd.	12-12-2015
5.	38/2014	Ms Meena Devi V/S -do-	12-12-2015
6.	66/2015	Workers Union V/S Himachal Energy Power Ltd. Baddi.	15-12-2015
7.	67/2015	-do-	15-12-2015
8.	52/2012	Shri Ragubir Singh V/S M/s Park Pharma Pvt. Ltd.	15-12-2015
9.	44/2013	Shri Vashishth Yadav V/S Manager M/s Elite Shoes Nahan Road Near Malwa Cotton Sirmour.	26-12-2015
10.	85/2014	Karamchari Sangh CV/s M/s Super Cassettes Industries Ltd.	26-12-2015
11.	109/2009	Shri Suresh Kumar V/S M.D. M/S Cosmo Ferrites Ltd.	26-12-2015
12.	73/2014	Smt Saroj Bala V/S Ms Shivalik Agro Poly Products Ltd.	28-12-2015
13.	54/2014	Shri Balkar Singh V/S M/S Allied Nippon Parwanoo.	28-12-2015

By order,
Sd/-

Pr. Secretary (Lab. & Emp.).

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL CUMLABOUR COURT, SHIMLA, (H.P).**

Ref. No. 119 of 2010.

Instituted on. 27.10.2010.

Decided on 4.12.2015.

Rajan Rai S/o Shri Sukul Rai R/o Village Chakian, P.O Maker Kasba Maker District
Chapra (Saharan), Bihar. *.Petitioner.*

Vs.

M/s SMS Footwear through its Prop. Sardar Malik Singh, Sawraj Majra, Plot no.113-A,
DIC Baddi, Tehsil Baddi, District Solan, HP. *.Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR

For respondent : Shri Rajeev Sharma, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether verbal termination of the services of Shri Rajan Kumar S/o Shri Shkul Kumar by the Managing Director M/s SMS Footwear Pvt. Ltd., Village Swrajmajra, Plot no. 113-A, DIC Industrial Area Baddi, Tehsil Baddi, District Solan w.e.f. 3.6.2009 without serving chargesheet and without holding enquiry and without complying the provisions of the Industrial Disputes Act, 1947 as alleged by workman is legal and justified? If not, to what back-wages, service benefits and relief the above named workman is entitled to?”

2. Briefly, the case of the petitioner is that he was engaged by the respondent company on 4.4.2004 as operator (TPR Machine) on monthly wages of Rs. 4500/- and overtime etc. on regular basis. There was deduction of Rs. 375/- per month towards ESI and the wages of the petitioner was to be increased @ 8.33% per annum. It is further stated that the petitioner had worked continuously with the respondent without any break and there was no charge of any misconduct or misbehavior with the respondent. On 13.2.2009, the petitioner while working with the respondent had suffered injuries on his left leg and was taken to FRU Nalagarh and thereafter he was referred to government hospital at Sector-32 Chandigarh, where he remained admitted for about one and half month and Doctor had given him fitness certificate on December, 2009. It is also stated that thereafter the petitioner went to join his duties in the month of December, 2009 but the respondent refused to accept his joining. His services had been retrenched in the month of Feb., 2010 without the compliance of the Industrial Disputes Act, 1947 (hereinafter referred as Act) as neither any enquiry was held nor he was associated with such enquiry. Even, no notice was given to the petitioner in lieu of termination nor the medical expenses incurred by the petitioner were paid to him, who had spent about one lac on his treatment on account of employment injuries suffered by him. The petitioner is entitled for backwages till the date of payment with up to date interest w.e.f. Feb., 2010 @ 5625/- per month, medical expenses to the tune of Rs. One lac, Rs. 50,000/- on

account of mental harassment and cost of Rs. 5,000/-. Against this back-drop the petitioner prayed that his claim may be allowed.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability, that the petitioner has not come to this Court with clean hands and that the petitioner is gainfully employed. On merits, it has been asserted that the petitioner joined the respondent company w.e.f. 1.8.2005, who was working on TPR Machine and due to up-gradation of the technology there was no order from the market for the product which was being manufactured by the respondent and in order to provide alternative job to the petitioner, he was transferred to New Delhi vide order dated 19.5.2009 but the petitioner failed to join at New Delhi. It is further asserted that the offer to work at Delhi is still open as the factory of the respondent at Baddi is lying closed for a long period as there is no production activities are going on at Baddi. It is admitted that no chargesheet was issued by the respondent. It is further admitted that the petitioner was admitted for injury at FRU Nalagarh and then at Chandigarh but it is denied that he remained under treatment up to December, 2009. It is also asserted that the petitioner was never retrenched, terminated or dismissed by the respondent, hence, the provisions of section 2-A of the Act are not attracted in the present case. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties give rise to the following issues which were struck on 28.5.2013.

1. Whether verbal termination of the services of Shri Rajan Kumar (petitioner) w.e.f. 3.6.2009 without serving chargesheet and holding enquiry is illegal and unjustified? . . .*OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether this claim petition is not maintainable? . . .*OPR.*
4. Whether the petitioner is gainfully employed? If so its effect? . . .*OPR.*
5. Relief.

5. Besides having heard the Learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 No.

Issue no. 4 No.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

*Reasons for findings.**Issue no.1.*

7. The learned AR for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without following the mandatory provisions of the Act. He further contended that on account of injuries sustained by the petitioner during duty hours, he remained admitted in the hospital firstly at FRU Nalagarh and thereafter at Government Hospital, Chandigarh and when he came back to join his duties after fitness, he was not allowed to join the same.

8. On the other hand, Ld. counsel for respondent contended that the services of the petitioner had never been terminated by the respondent, who was simply transferred to New Delhi in order to provide alternative job vide order dated 19.5.2009 as due to up-gradation of the technology, there was no order from the market for the product which was being manufactured by the respondent but the petitioner failed to join at New Delhi. He further contended that the offer to work at Delhi is still open for the petitioner as the factory of the respondent at Baddi is lying closed for a long period as no production activities are going on at Baddi.

9. To prove his case, the petitioner has appeared into the witness box as PW-1 and stated that he had joined the respondent company on 4.4.2004 as Machine Operator on regular basis. He was terminated on 13.6.2009. Prior to that he met with an accident while working in the Company and his right leg got fractured for which he was first treated at ESI hospital Nalagarh vide prescription slip Ex. P-1 and thereafter from Chandigarh vide prescription slip Ex. P-2. Thereafter, when he went to the company after obtaining fitness, he was not allowed. Vide Ex. P-3, he wrote to the Labour Inspector and vide Ex. P-4, he informed the Labour Inspector. No notice and compensation had been given to him. In cross-examination, he denied that the factory had been closed w.e.f. Jan., 2008 and no production was going on and that he had been informed through letter in this regard and he was also informed to join at Delhi. He further denied that he had not joined at Baddi, intentionally.

10. On the other hand, the respondent has examined RW-1 Shri Surjit Singh, who has stated that on 16.3.2010, he had closed the factory at Baddi and to this effect he had also written to the Excise Department vide Ex. R-1 and on 4.6.2012, the acknowledge of the same had been received by him vide Ex. R-2. The petitioner was working under him. He (petitioner) used to run TPR Machine. After the closure of factory, the petitioner was advised to join his duties at Delhi unit of the company vide Ex. R-3 to Ex. R-8. Letter Ex. R-4, had been given to the petitioner by hand but he had refused to receive the same. The petitioner was never terminated. In the cross examination, he denied that on 3.6.2008, the services of the petitioner had been terminated. He admitted that in the year, 2008, the petitioner met with an accident while working in the factory. He denied that on the production of fitness certificate, the petitioner was not allowed to join his duties. He stated that when the petitioner had not joined at Delhi, no enquiry had been conducted against him.

11. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was working as operator with the respondent company. It is admitted case of the parties that the petitioner met with an accident while working in the factory and he was taken to hospital first at FRU Nalagarh and thereafter to Government hospital Chandigarh. As per the petitioner, when he went to join his duties, he was not allowed to join the same. He also placed on record the prescription slips Ex. P1- and Ex. P-2. On the other hand, the stand of the respondent is to this effect that since the respondent had closed its unit at Baddi, the petitioner was transferred and advised to join at Delhi. In this regard, the respondent has

placed on record letters Ex. R-3 to Ex. R-8. The respondent has also placed on record letter Ex. R-1, written to Assistant Commissioner Central Excise Division, Shimla regarding intimation of closure of unit since 16.3.2010 and the acknowledgement of the same had been received by respondent company vide Ex. R-2. Moreover, it has been stated by RW-1 that since the factory at Baddi had been closed, the petitioner was advised to join his duties at Delhi and as such his services were transferred to Delhi. It is a settled proposition of law that the transfer of an employee is an incidence of service and is a matter of internal management of the company. **In (2004) 3 SCC 172, titled as Pearlite Liners (P) Ltd Vs. Manorama Sirsi**, it has been held by the Hon'ble Apex Court that unless there is a term to the contrary in the contract of service, a transfer order is a normal incidence of service. The Hon'ble Apex Court has held as under:

“Unless there is a term to the contrary in the contract of service, a transfer order is a normal incidence of service. The plaintiff has neither pleaded nor has there been any effort on her part to show that the impugned transfer order was in violation of any term of her employment. In the absence of a term prohibiting transfer of the employee, prima facie the transfer order cannot be called into question”.

12. In the instant case also no material has been placed on record by the petitioner to suggest that his services were terminated in Feb., 2010 as he was not allowed to join after fitness rather the stand of the respondent throughout is that since the unit at Baddi stood closed, therefore, the petitioner was transferred and was advised to join the duties at Delhi. In the reply of the respondent, it has been categorically mentioned that the offer to the petitioner to work at Delhi is still open. Even, RW-1 in his statement before this Court stated that the petitioner was free to join at Bahadurgarh unit of the company and his services were never terminated. On the other hand, the petitioner in his cross-examination has stated that he was not ready and willing to join at Delhi unit of the respondent and his case be decided on the basis of lump sum compensation. Therefore, from the perusal of the entire evidence on record it stands proved that the services of the petitioner were never terminated but he was only transferred. The petitioner has neither pleaded nor proved that he was transferred on account of malafide act on the part of the respondent or his transfer order was in violation of any term of his employment. Hence, in the absence of any malafide on the part of the respondent, the transfer order of the petitioner cannot be called into question especially when it has come on record that Baddi unit of the respondent stands closed since 16.3.2010.

13. Thus, keeping in view the entire facts and circumstances of the case and also in view of the above cited ruling, I have no hesitation in holding that the services of the petitioner have not been terminated but he was transferred to Baddi unit due to closer of the respondent's unit at Baddi. Accordingly, the petitioner has failed to prove this issue which is answered against him. **Issue no.2.**

14. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

Issue No.3.

15. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

Issue No.4.

16. To prove this issue no specific evidence has been led by the respondent which could show that he was gainfully employed. Hence, in the absence of any evidence on record, this issue is answered against the respondent.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 4th Day of December, 2015.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL CUM LABOUR COURT, SHIMLA, (H.P) CAMP AT SOLAN**

Ref. No. 59 of 2012.

Instituted on.27.8.2012.

Decided on 10.12.2015.

Raj Pal S/O Shri Dhouli Ram, R/O Village and Post Office Kuthar, Tehsil Theog, District Shimla, H.P. . *Petitioner.*

Vs.

The Factory Manager/Occupier, M/S J.P. Motors, Kumarhatti, Bye Pass Road, Anji, P.O. Barog, Tehsil and District Solan, H.P. . *Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondent : Shri Sudhir Thakur, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether termination of services of Shri Raj Pal S/O Shri Dhouli Ram, R/O Village and Post Office Kuthar, Tehsil Theog, District Shimla, H.P. by The Factory Manager/Occupier, M/S J.P. Motors, Kumarhatti, Bye Pass Road, Anji, P.O. Barog, Tehsil and District Solan, H.P. w.e.f. 09-04-2010 without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?”

2. Briefly, the case of the petitioner is that he was employed in the respondent company during the month of September, 2009 as driver-cum-mechanic and his last wages drawn was Rs.

4500/- per month. The services of the petitioner had been terminated without assigning any reason despite the fact that he had completed more than 240 working days in a calendar year preceding to his termination. It is stated that the services of the petitioner had been terminated without any notice and retrenchment compensation in violation of the provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as Act). Since, the termination orders are not speaking one, hence, the same are null, void and inoperative. It is further stated that the conduct of the petitioner was quite satisfactory, who was neither served with any show cause notice/chargesheet nor enquiry was held in accordance with the law of natural justice. The respondent has engaged juniors namely S/Shri Mohinder Kumar, Tilak Raj and many others in violation of section 25-G & 25-H of the Act. Moreover, the workman was not paid his earned wages for the month of Feb., March & April, 2010 and as such the action of non-payment of earned wages by the respondent is highly deplorable. Against his back-drop, a prayer for reinstatement w.e.f. 10.4.2010 with full back wages, seniority and other consequential service benefits has been made.

3. The respondent has contested the claim of the petitioner by filing reply wherein preliminary objections had been raised qua suppression of material facts as the petitioner was transferred from Solan Branch to Nalagarh Branch due to negligent act on his part as he caused an accident at Solan and failed to adhere the order of the respondent. On merits, it has been denied that the petitioner was employed as driver during the month of September, 2009 and his last wages drawn was Rs. 4500/- per month. It is further denied that the services of the petitioner had been terminated without assigning any reason and that too without necessary compliance of section 25-F of the Act. It is also denied that while retrenching the petitioner from service, juniors to him namely Mohinder Kumar, Tilak Raj and many others had been retained/engaged by the respondent. The respondent has denied all the allegations as leveled by the petitioner and prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegation by denying those of the respondent.

5. Pleadings of the parties give rise to the following issues which were struck on 8.7.2013.

1. Whether the termination of the service of the petitioner w.e.f. 9.4.2010 without following the provisions of the Industrial Disputes Act is illegal and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved, to what service benefits, the petitioner is entitled to? . . .*OPP.*
3. Whether the petitioner has approached this Court by suppressing material facts as alleged? If so, what effect? . . .*OPP.*
4. Relief.

6. Besides having heard the Learned counsel/AR for the parties, I, have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 No.

Relief. Reference answered in favour of the respondent and against the petitioner, per operative part of order.

Reasons for findings.

Issue no.1

8. The learned AR for the petitioner contended that the services of the petitioner have been terminated by the respondent without complying with the mandatory provisions of the Act as neither any notice was served upon him nor he was paid compensation. He further contended that junior to the petitioner are still working with the respondent and his services have been terminated without any cogent reason and even no opportunity of being heard was afforded to him before terminating his services.

9. On the other hand, the learned counsel for the respondent contended that the services of the petitioner have not been terminated by the respondent, who was transferred to Nalagarh Branch due to his negligent act as he caused an accident at Solan and failed to join his services at Nalagarh Branch. He further contended that all the dues were paid to the petitioner and nothing is due.

10. To prove his case, the petitioner has examined himself as PW-1, who has stated that he was engaged as Driver-cum-Mechanic by the respondent in the month of September, 2009 on monthly salary of Rs. 4500/- . and he worked continuously till 10.4.2010 for more than 240 days and on 10.4.2010, he was terminated without any notice and compensation. Juniors to him S/Shri Mohinder, Sunil Kumar and Tilak Raj are still working with the respondent. He was not paid the salary for the months of Feb., March and April, 2010. He was neither served with any chargesheet nor any enquiry was conducted. These days he was not working anywhere and he may be reinstated in service with seniority and continuity along-with back-wages. In cross-examination, he admitted that he was not issued any appointment letter by the company and the salary was being paid to him in cash. He had worked for eight months. He denied that he was advised to join at Nalagarh showroom by the respondent. He further denied that he caused an accident of the vehicle of the company. He also denied that he was paid all the dues. He further denied that he had left the job on his own. He denied that he was served with notice by the respondent company.

11. To rebut the case of the petitioner, the respondent has examined one Shri Harish Kumar, Accounts Manager who has stated that he was authorized vide letter Ex. RW-1/A and the copy of statement of account of petitioner is Ex. RW-1/B. Ex. RW-1/C to Ex. RW-1/C-2 are the copies of advance which was taken by the petitioner from respondent. Ex. RW-1/D and Ex. RW 1/E are the copies of salary slip/voucher of petitioner and Ex RW-1/F is the copy of last salary statement of petitioner. According to account statement, total salary of the petitioner had been paid. In crossexamination, he stated that he has no knowledge that before terminating the services of the petitioner, notice under section 25-F was served upon the petitioner or not and as per record, the petitioner had not been paid retrenchment compensation. He denied that the petitioner had not been paid the salary for the months of Feb., March and April, 2010.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that the petitioner had worked with the respondent company as driver. The stand of the petitioner is to the effect that he had worked for more than 240 days in twelve calendar months preceding his termination but there is nothing on record which could show that the petitioner had completed 240 working days in twelve calendar months preceding his termination.

However, except for his bald statement, there is nothing on record which could go to show that the petitioner had completed 240 working days in twelve calendar months prior to his termination. No record from the respondent has been summoned by the petitioner in order to show that prior to his termination he had completed 240 days in twelve calendar months. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”

13. In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh**, the Hon'ble Supreme Court has held that:—

“19. In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he has actually worked with the employer for not less than 240 days during the period twelve calendar months preceding the date of termination. What we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by the employer has not been contradicted. It is improbable that workman who claimed to have worked with the appellant for such a long period would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer. Therefore, we are of the opinion that the workman has failed to discharge his burden that he was in employment for 240 days during the preceding 12 months of the date of termination of his service.....”

A bare perusal of the extract of the judgment produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged by the workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination.

14. Since, the petitioner has failed to prove on record that he had completed 240 working days in twelve calendar months, hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner. Thus, having regard to the entire evidence on record and on the strength of the above cited rulings, it can safely be concluded that the petitioner has failed to prove on record that he has completed 240 working days in twelve calendar months preceding his termination as it was incumbent upon the petitioner to prove this necessary ingredient that he had completed 240 working days in twelve calendar months preceding his termination.

15. The other plea of the petitioner is to this effect that the persons junior to him have been engaged by the respondent. However, except for the oral statement of the petitioner that Mohinder, Sunil Kumar and Tilak Raj, who were junior to him have been engaged by the respondent, there is no other cogent evidence placed on record by the petitioner to this effect. The petitioner was under an obligation to prove by leading cogent evidence in this regard but no evidence has been led by the petitioner to prove that the persons junior to him were engaged and thereafter retained in service by the respondent. However, the petitioner has failed to prove that the persons junior to him have been engaged by the respondent. Therefore, in the absence of any cogent and satisfactory evidence on record it cannot be held that the provisions of section 25-G of the Act are attracted to the present case and any hostile discrimination was meted out against the petitioner.

16. Hence, keeping in view the entire facts and circumstances of the case, I have no hesitation in holding that the termination of services of petitioner from 9.4.2010 is not illegal and unjustified. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue no.2.

17. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

Issue no.3.

18. The learned counsel for the petitioner contended that due to negligent act of the petitioner, he caused an accident at Solan, hence, he was transferred to Nalagarh and as such the petitioner has suppressed the material facts from this Court but in support of this contention of the learned counsel for the respondent, no evidence was led by the respondent which could go to show that due to the negligent act of the petitioner, he caused an accident of the vehicle of the respondent and has suppressed material facts from this Court. In the absence of any such evidence on record, this issue is decided against the respondent.

Relief.

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 10th Day of December 2015.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.
Camp at Solan.

Ref.33 Of 2013

Smt Suman Saini V/s M/s pine Grove , School, Solan.

12.12.2015:

Present:- Petitioner in person.

Sh Manmohan Singh, Head Finance of the respondent school. This case is being taken up today before the National Lok Adalat and the petitioner is ready and willing to receive Rs.2,00,000/-(Rs.Two lacs only) on account of full & final settlement of her claim, To this effect, her statement recorded separately. In view of the statement of the petitioner, the matter is amicably settled before the National Lok adalat and as such the reference is answered accordingly. The Statement of petitioner shall form part and parcel of this order. Let a copy of this award/order be

sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

12.12.2015

Sd/
(Vasu Sood)
Member

Sd/
(prof.SN.Sharma)
Member

Sd/-
(Sushil Kukreja)
Chairman

Ref 17 of 2014

Smt Asha Devi V/s M/s wildcraft India Pvt, Ltd.

12.12.2015:

Present:- Petitioner in person.

Sh Dhanajaya, Factory Manager, for the respondent company. This case is being taken up today before the National Lok Adalat and the parties are ready and willing to settle the dispute. The Petitioner has accepted an amount of Rs.50,000/-(Rs. Fifty thousand only) as full & final settlement of her claim today in the court . To this effect, the statements of petitioner and Sh Dhananjaya, Factory Manager recorded separately.

In view of the statement of the petitioner as well as sh Dhananjaya, Factory Manager ,, the matter is amicably settled before the National Lok adalat and as such the reference is answered accordingly. The Statement of parties shall form part and parcel of this order. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

12.12.2015

Sd/
(Vasu Sood)
Member

Sd/
(Prof.SN.Sharma)
Member

Sd/-
(Sushil Kukreja)
Chairman

Ref.38 of 2014

Ms Meena Devi V/s M/s Wild Craft India (P) Ltd Solan.

12.12.2015:

Present:- Petitioner in person.

Sh Dhanajaya, Factory Manager, for the respondent company. This case is being taken up today before the National Lok Adalat and the parties are ready and willing to settle the dispute. The

Petitioner has accepted an amount of Rs.50,000/-(Rs. Fifty thousand only) as full & final settlement of her claim today in the court . To this effect, the statements of petitioner and Sh Dhananjaya, Factory Manager recorded separately.

In view of the statement of the petitioner as well as Sh Dhananjaya, Factory Manager , the matter is amicably settled before the National Lok adalat and as such the reference is answered accordingly. The Statement of parties shall form part and parcel of this order. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

12.12.2015

Sd/
(Vasu Sood)
Member

Sd/
(Prof.SN.Sharma)
Member

Sd/-
(Sushil Kukreja)
Chairman

Ref.66 of 2015

Workers Union V/s Himachal Energy Power Ltd Jabli

15.12.2016:-

Present:- Shri Manjeet Kumar, President of the workers union With Shri J.C.Bhardwaj, AR for the petitioner. Shri. Rahul Mahajan Advocate for the respondent.

Today, Shri Vijay Krishan, General secretary of the petitioner union has stated that the workers union had settled the matter with the respondent management under section 12(3) of the industrial Dispute Act,1947 before the Labour Commissioner, Shimla and also placed the copy of the settled date 5.11.2015, Ex.C-1. To this effect his statement recorded separately.

The respondent has also moved an application under section 151CPC for placing on record the settlement date 5.11.2015 entered before the Labour Commissioner and a prayed has been made to decide the reference in terms of the aforesaid settlement.

This court has also received notification (Addendum) in continuation of the reference from the office of Labour Commissioner, HP wherein it has been observed that conciliation proceedings were held on 5.11.2015 and a mutually acceptable and agreed settlement has been arrived at u/s 12(3)of the Industrial Disputes Act, 1947 and all the demands raised vide demand notice dated nil and dated 20.7.2015 have been settled in a holistic manner and nothing remained pending for adjudication and it is a full and final settlement of the demands raised vide above mentioned demand notices. As per clause-B of the settlement it was also agreed upon by both parties of the dispute that:—

“ It was agreed upon by both the parties to the dispute that since this is a full and final settlement pertaining to the demand –notice given on 20.7.2015 and another demand notice dated nil or any another demand notice given till signing of this agreement the reference made to the Labour Court Shimla will be requested to be withdrawn by the office of the Labour Commissioner.”

Hence, in view of the statement of Shri Vijay Krishan , General Secretary . application filed by the respondent management and also in view of the notification (addendum)received from the Labour Commissioner, I am satisfied that as per settlement Ex.C-1, a lawful compromise has been effected between the parties. Hence, the reference made by the appropriate government to this Court for adjudication is answered accordingly in terms of settlement Ex.C-1. The settlement Ex. C-1 shall form a part and parcel of this award/order. The application filed by the respondent under section 151 CPC stands disposed of. It be tagged with the main case file after registration. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced

15.12.2015

Sd/-
Presiding Judge Labour Court, Shimla.

Ref.67 of 2015

Workers Union V/s Himachal Energy Power Ltd Jabli

15.12.2016:-

Present:- Sh Vijay Krishan , General Secretart of the workers union With Shri J.C.Bhardwaj, AR for the petitioner.

Sh. Rahul Mahajan Advocate for the respondent. Today, Sh Vijay Krishan, General secretary of the petitioner union has stated that the workers union had settled the matter with the respondent management under section 12(3) of the industrial Dispute Act,1947 before the Labour Commissioner, Shimla and also placed the copy of the settled date 5.11.2015, Ex.C-1. To this effect his statement recorded separately.

The respondent has also moved an application under section 151CPC for placing on record the settlement date 5.11.2015 entered before the Labour Commissioner and a prayed has been made to decide the reference in terms of the aforesaid settlement.

This court has also received notification (Addendum) in continuation of the reference from the office of Labour Commissioner, HP wherein it has been observed that conciliation proceedings were held on 5.11.2015 and a mutually acceptable and agreed settlement has been arrived at u/s 12(3)of the Industrial Disputes Act, 1947 and all the demands raised vide demand notice dated nil and dated 20..7.2015 have been settled in a holistic manner and nothing remained pending for adjudication and it is a full and final settlement of the demands raised vide above mentioned demand notices. As per clause-B of the settlement it was also agreed upon by both parties of the dispute that:—

“ It was agreed upon by both the parties to the dispute that since this is a full and final settlement pertaining to the demand –notice given on 20.7.2015 and another demand notice dated nil or any another demand notice given till signing of this agreement the reference made to the Labour Court Shimla will be requested to be withdrawn by the office of the Labour Commissioner.”

Hence, in view of the statement of Shri Vijay Krishan , General secretary . application filed by the respondent management and also in view of the notification (addendum)received from the Labour Commissioner, I am satisfied that as per settlement Ex.C-1, a lawful compromise has been effected between the parties. Hence, the reference made by the appropriate government to this Court for adjudication is answered accordingly in terms of settlement Ex.C-1. The settlement Ex. C-1 shall form a part and parcel of this award/order. The application filed by the respondent under section 151 CPC stands disposed of. It be tagged with the main case file after registration. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced

15.12.2015

Sd/-
Presiding Judge
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL CUMLABOUR COURT, SHIMLA, (H.P).**

Ref. No. 52 of 2012.

Instituted on. 26.7.2012.

Decided on 15.12.2015.

Raghubir Singh S/o Shru Bhura Ram R/o Village Khera, P.O Nanakpur, Tehsil Kalka,
District Panchkula Haryana. *.Petitioner.*

Vs.

M/s Park Pharma Pvt. Ltd., Kalu-Jhanda, P.O Mandhala, Tehsil Baddi, District Solan, HP
through its Managing Director. *.Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidtta, Advocate.

For respondent : Shri Deepak Bhasin, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether the termination of Shri Raghubir Singh S/o Shri Bhura Ram R/o Village Khera, P.O, Nanakpur, Tehsil Kalka District Panchkula Haryana by the Managing Director M/s Park Pharma Private Limited Kalu-Jhanda, P.O Mandhala, Tehsi Baddi, District Solan, HP w.e.f. 21.10.2010 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back-

wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. In nutshell the case of the petitioner is that in the month of Feb., 2007 he had been engaged as operator by the respondent company and worked as such till 21.10.2010 continuously and thereafter his services had been terminated by the respondent without assigning any reason and without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) as no notice, chargesheet and enquiry was held by the company, hence, the action of the respondent is illegal and against the mandatory provisions of Labour Laws. It is further stated that the work and conduct of the petitioner remained up to the satisfaction of the official of the respondent company and he had already completed 240 days in a calendar year. On 21.10.2010, the petitioner along-with other workers came to factory for discharging their duties but the security officer of the company stopped the petitioner and the gate was closed for him and he was told that his services have been terminated. Thereafter, the petitioner requested for his re engagement but of no avail. Against this back-drop a prayer for his reinstatement with all the consequential service benefits including backwages has been made.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability, estoppel, that this Tribunal has no jurisdiction to adjudicate upon the matter and that the petitioner has put into motion the machinery of this Tribunal without there being any legal and valid cause of action in his favour. On merits, it has been asserted that the petitioner has concealed relevant information regarding his voluntarily leaving the job and he had sufficient time to reconsider and withdraw his resignation till 21.10.2010 when he left the job. It is further asserted that the services of the petitioner have never been terminated, who voluntarily and without any pressure from any corner submitted his resignation on 30.9.2010 which was duly accepted by the General Manager on the same day and was forwarded to management and HR for necessary compliance, however, the petitioner was allowed to work till he finally left the job on 20.10.2010 after settling all the dues. It is also asserted that the petitioner had taken an advance of Rs. 25,000/- on 25.9.2009 and at the time of leaving, the petitioner requested the respondent to settle all his dues after adjusting the advance paid to him. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. Pleadings of the parties give rise to the following issues which were struck on 25.11.2014.

1. Whether the termination of the services of the petitioner w.e.f. 21.10.2010 is illegal and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether this petition is not maintainable? . . .*OPR.*
4. Whether the petitioner has submitted his resignation on 30.9.2010 as alleged? . . .*OPR.*
5. Relief.

6. Besides having heard the Learned counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to reinstatement with seniority and continuity but without back-wages.

Issue no.3 No.

Issue no. 4 No.

Relief. Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings.

Issue no.1 & 4.

8. Being interlinked and correlated both these issues are taken up and discussed together for decision.

9. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without following the mandatory provisions of the Act. He further contended that before terminating the services of the petitioner neither any enquiry was conducted nor he was afforded any opportunity of being heard. Since, the petitioner had completed 240 days in each calendar year, his termination without notice and compensation is against the provisions of the Act.

10. On the other hand, Ld. counsel for respondent contended that the services of the petitioner had never been terminated by the respondent, who himself tendered his resignation which was duly accepted. He further contended that before leaving of job by the petitioner, his dues were settled and now in place of petitioner other worker had been engaged.

11. To prove his case, the petitioner has appeared into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, in examination-in-chief wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the copy of demand notice Ex. PW-1/B. In cross-examination, he denied that he had written a letter on 30.9.2010 to the company. He denied that he had taken an advance of Rs. 25,000/- from the company on 25.9.2010. He denied that he had left the job on his own and his dues had been paid by the company. He expressed his ignorance that whether the company had engaged new person in his place.

12. On the other hand, the respondent has examined RW-1 Shri Sanjay Talwar, General Manager, who has stated that the petitioner was initially engaged as helper in the year, 2007 and thereafter promoted as labeling operator and on 30.9.2010, he submitted his resignation Ex. RW-1/A which was accepted by him. After the resignation of the petitioner, he worked for 20 more days on his request as there was no alternate operator to operate the machine. Before applying for resignation, an amount of Rs. 25,000/- was outstanding against him which he had taken in advance vide voucher Ex. RW-1/B. Vide vouchers Ex. RW-1/C and Ex. RW-1/D, they have calculated the legal dues of the petitioner but he had not come forward to receive the payment. In December, 2010, the company received a letter from the petitioner Ex. RW-1/E requesting for his re

instatement with the copy to Labour Officer etc. who thereupon initiated the proceedings against the company. Before Labour Officer, the petitioner had settled the matter with the company and accepted the full & final payment on Ex. RW-1/C and Ex. RW-1/D by appending his signatures. The company had filled up the post which had fallen vacant due to the resignation of the petitioner and the present claim has been filed by him to extract more money from the company. In cross examination, he admitted that the petitioner was engaged as helper in Feb., 2007 and worked as such till 20.10.2010 continuously. He denied that the services of the petitioner had been terminated on 21.10.2010. He admitted that after 20.10.2010, the petitioner had not submitted any resignation. Further volunteered that he had continued to work at their request for twenty days after his resignation. He admitted that the petitioner had worked for more than 240 days in each calendar year. He denied that the resignation Ex. RW-1/A had been created lateron. He admitted that they have made the payment of Rs. 2550/- as per Ex. RW-1/C to the petitioner as the salary due to him. He further admitted that they paid the over time charges to the petitioner vide Ex. RW-1/D before the Conciliation Officer. He denied that a new person had been appointed in place of the petitioner but explained that they had transferred a new person from another Branch in order to fill up the post vacated by the petitioner.

13. RW-2 Shri Pritam Kumar has stated that he was working as Packaging Supervisor with the respondent company since March, 2007 and the petitioner was working in the company. The petitioner had submitted resignation letter Ex. RW-1/A to the company before him being the Supervisor and he sent the petitioner along-with the resignation letter to the HOD Mr. Anoop. He asked the petitioner about resignation who (petitioner) replied that since he did not intend to work in the company, therefore, he had resigned as per his own will. Thereafter, the HOD had sent the petitioner along-with the resignation letter to the General Manager. In cross-examination, he stated that he is not conversant with the handwriting and signatures of the petitioner. He had neither received nor forwarded the alleged resignation letter and also not read the same. He could not say that the letter Ex. RW-1/A was the same letter which he had submitted before him. He admitted that the petitioner had not submitted the resignation letter in his presence to the GM. He denied that the petitioner had not submitted any resignation letter. He further stated that there was no order in writing by the GM to him to take the work from the petitioner for twenty more days after his resignation.

14. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as operator by the respondent company in the month of Feb., 2007 and worked as such till 20.10.2010. The only stand which has been taken by the respondent is to the effect that the petitioner had voluntarily submitted his resignation and his services have not been terminated whereas the petitioner has contended that he was illegally terminated from service without complying with the mandatory provisions of the Act. The respondent has brought on record the copy of alleged resignation letter dated 30.9.2010 Ex. RW 1/A which appears to be written and signed in Hindi. However, the petitioner has denied that he has tendered his resignation at any point of time. In cross-examination, he categorically denied that the letter dated 30.9.2010 was written by him rather he stated that neither he had written the letter nor the same was in his handwriting. Even, RW-2 could not prove the signatures and handwriting of petitioner on letter Ex. RW-1/A as he admitted in cross-examination that he was not conversant with the handwriting and signatures of the petitioner. The case of the respondent is that the resignation letter Ex. RW-1/A was submitted by the petitioner before RW-2 (Shri Pritam Kumar). However, in crossexamination, RW-2 admitted that he had neither received nor forwarded the alleged resignation letter. He further stated that he had not even read the resignation letter and he could not state that the alleged resignation letter Ex. RW-1/A was the same letter which the petitioner had submitted before him. He further admitted that the resignation letter was not submitted by the petitioner to the General Manager (Mr. Sanjay Talwar) in his presence. Moreover, it can be seen with the help of the naked eye that the signatures of the petitioner on the demand

notice Ex. PW-1/B, Vouchers Ex. RW-1/C and Ex. RW- 1/D, are different then his alleged signatures on resignation letter Ex. RW-1/A. In the aforesaid documents the petitioner has appended his signatures in English whereas in the alleged resignation letter Ex. RW-1/A, the signatures are in Hindi and it does not appear to be that of the petitioner. Hence, from the perusal of the entire evidence on record, it has become clear that the respondent has miserably failed to prove that the resignation letter Ex. RW-1/A was written and signed by the petitioner himself. Therefore, no credence can be attached to the resignation letter Ex. RW-1/A. Moreover, the case of the respondent is that after the alleged resignation by the petitioner on 30.9.2010, he was allowed to continue for twenty more days on the request of RW-1 Shri Sanjay Talwar. However, to substantiate the aforesaid contention, the respondent had failed to place any material on record. RW-2, Shri Pritam Kumar has admitted that there was no order in writing by the General Manager directing him to take the work from the petitioner for twenty more days after his resignation. It is not understandable as to how the petitioner was allowed to continue till 20.10.2010 when he had allegedly resigned from his services on 30.9.2010. Moreover, the case of the respondent is that in the conciliation proceedings before the Labour-cum-Conciliation Officer the petitioner had settled the matter with the respondent company and accepted full & final payment. However, this version of the respondent is also not worthy of credence. Had any settlement been arrived at before the Labour-cum-Conciliation Officer, the same would have been signed by him and instead of referring the matter to this Court, the Labour Officer would have recorded the settlement. However, no such settlement has been placed on record by the respondent. Though, RW-1 stated in examination-in-chief that the petitioner had accepted the full & final payment on vouchers Ex. RW-1/C and Ex. RW-1/D in conciliation proceedings before Labour Officer. However, in cross-examination, he admitted that the company had made the payment of Rs. 2550/- as per Ex. RW-1/C to the petitioner as salary due to him and vide voucher Ex. RW-1/D, over time charges were paid to the petitioner. Hence, the respondent has failed to prove that the petitioner had settled the matter with the company in the conciliation proceedings and accepted full & final payment. Therefore, from the perusal of the entire evidence on record, it can safely be held that the petitioner had not submitted his resignation on 30.9.2010 vide letter dated 30.9.2010 Ex. RW-1/A.

15. Now, advertng to the other aspect of the case. Admittedly, the petitioner had worked with the respondent, w.e.f. Feb., 2007 till 20.10.2010 and he has completed more than 240 days in each calendar year, preceding his termination. Even, RW-1 Shri Sanjay Talwar has admitted in his cross-examination that the petitioner had worked for more than 240 working days in each calendar year. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'bel Apex Court has held as under:

“34.The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law.”

16. In the present case also admittedly no notice under section 25-F of the Act was issued to the petitioner before terminating his services. Hence, In view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner w.e.f. 21.10.2010 by the respondent without complying with the provisions of the Act, is illegal and unjustified. Hence, both these issues are decided accordingly.

Issue no.2.

17. Since, I have held under issue no.1 and 4 above, that the petitioner has not submitted his resignation, who was illegally terminated by the respondent in utter violation of the provisions of the Act, hence, he is held entitled to his re-instatement in service along-with seniority and continuity. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. The petitioner has only prayed for his reinstatement along-with full back-wages but he has failed to prove that he was not gainfully employed after his retrenchment. He has only stated in his affidavit Ex. PW-1/A that he was unemployed from the date of his illegal termination. However, except for his bald statement, there is no other evidence on record led by the petitioner in this respect. **In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

18. In the present case, the petitioner only prayed for his reinstatement with backwages in his statement of claim and in his statement as PW-1. The petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after his retrenchment. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the Hon'ble Apex Court in **(2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

19. In the present case, as observed hereinabove, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination i.e. w.e.f. 20.10.2010. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue No.3.

20. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 15th Day of December, 2015.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL CUMLABOUR COURT, SHIMLA, (H.P).**

Ref. No. 44 of 2013.

Instituted on. 15.7.2013.

Decided on 26.12.2015.

Vashishth Yadav S/o Shri Yadu Yadav, R/o VPO Sadihar Thana, Bhagwanpur, District
Shiwan, Bihar & other 88 workers. . .Petitioner.

Vs.

Occupier/Manager M/s Elite Shoes, Nahan Road near Malwa Cotton, Village Surajpur,
Paonta Sahib District, Sirmour, HP. . .Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Subhash Sanhi, Advocate.

For respondent : Already ex-parte.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether termination of services of Shri Vashishth Yadav S/o Shri Yadu Yadav, VPO Sadihan, Thana Bhagwanpur, District Siwan, Bihar and other 88 workers (list enclosed) on account of sudden illegal clouser of its unit/establishment w.e.f. 4.6.2011 by the management of M/s Elite Shoes, Nahan Road, Near Malwa Cotton, Village Surajpur Paonta Sahib, District Sirmour, HP without complying with the mandatory provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits i.e notice pay, gratuity, leave encashment, overtime benefits etc.,

and compensation the aggrieved workmen are entitled to from the above management?”

2. The above mentioned reference has been received in this Court on 10.7.2013 and thereafter the notices were issued to both the parties. Since, the respondent has failed to appear before this Court despite service, hence, he was proceeded against ex-parte vide order dated 23.9.2014 and thereafter the petitioner led ex-parte evidence without filing any claim petition and one Shri Santosh Pandit has appeared into the witness box as PW-1 and tendered his affidavit Ex. PW-1/A in examination-in-chief wherein he has stated that being one of the petitioners, he was instructed by all other petitioners to give statement in this case. He further stated that they were working as helper, supervisor, operator and shoes sewing experts with respondent company from different dates and on 4.6.2011, the factory was closed without serving any notice upon them and they are jobless and even their due salary has been withheld by the respondent. He prayed for the release of their salary alongwith interest @ 9% from 4.6.2011.

3. I may mention at the very out-set that this court is required to answer the reference which has been made to this Court by the appropriate government. As per the reference, this court has to determine that as to whether the termination of the services of Shri Vashisht Yadav and 88 other workers on account of sudden illegal closure of the unit w.e.f. 4.6.2011 by the respondent without complying with the mandatory provisions of the Industrial Disputes Act, 1947, is legal and justified. However, no claim on behalf of the petitioners has been filed and only one of the petitioners i.e Santosh Pandit has appeared into the witness box as PW-1. All other petitioners have not stepped into the witness box to depose that their services had been orally and illegally terminated by the respondent. There is no explanation as to why all the other petitioners have failed to appear in the witness box in order to prove their case. Though, PW-1 has stated in his affidavit Ex. PW-1/A that he was having instructions from all the other petitioners and was competent to give evidence. However, no document regarding any authorization to give evidence on behalf of all the other petitioners has been placed on record by him. Moreover, the petitioners have failed to place on record any document regarding their date of appointment with the respondent and also the fact that they had completed 240 days in preceding twelve calendar months. There is also nothing on record which could go to establish that the respondent had closed its factory without serving any notice upon the petitioners. Similarly, no evidence has been led by the petitioners to establish that they were not paid their due salary by the respondent. There is no material on record which could go to show that the termination of the services of Shri Vashisht Yadav and 88 other workers on account of sudden illegal closure of the unit w.e.f. 4.6.2011 by the respondent without complying with the mandatory provisions of the Industrial Disputes Act, 1947, is illegal and un-justified. Hence, in the absence of any evidence on record, the reference is answered against the petitioners and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 26th Day of December, 2015.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

26.12.2015.

Present: Shri R.K Khidtta, Advocate for petitioner.

Shri Anil Kumar Nijwan, Factory Manager with Shri Rahul Mahajan, Advocate for respondent.

It has been stated by Shri Anil Kumar Nijhawan, Factory Manager of respondent company that vide settlement Ex. C-1, the workers of the Super Cassettes Industries (P) Ltd., have settled all the issues raised in this reference (85 of 2014) with the management. His statement to this effect recorded separately.

Vide separate statement recorded today, Shri R.K Khidta, learned counsel for the petitioner has also stated to the similar effect that all the issues raised in the present reference have been settled between the parties vide settlement Ex. C-1.

Hence, in view of the statement of Shri Anil Kumar Nijhwan, Factory Manager and Shri R.K Khidta, Advocate, I am satisfied that as per Ex. C-1, a lawful compromise has been effected between the parties. Therefore, the reference sent by the appropriate government for adjudication is answered in terms of settlement Ex. C-1 which shall form part of this order/award. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette.

File, after completion, be consigned to records.

Announced:

26.12.2015.

(SUSHIL KUKREJA),
Presiding Judge
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUMLABOUR COURT, SHIMLA, (H.P).**

Ref. No. 109 of 2009.

Instituted on.18.12.2009.

Decided on 26.12.2015.

Suresh Kumar S/o Shri Shakrti Chand R/o Village Kot, P.O Jabli, Tehsil Kasauli, District Solan, HP. *.Petitioner.*

Vs.

1. The General Manager M/s Cosmo Ferrites Ltd., Jabli, District Solan, HP.
2. Shri Vikram S/o Shri Padam Singh (Contractor), C/o Cosmo Ferrites Ltd., Jabli, District Solan, HP. *. Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Vishal Panwar, Advocate

For respondent no.1 : Shri Rahul Mahajan, Advocate.

For respondent no.2 : Ms. Veena Sood, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether the termination of the services of Shri Suresh Kumar S/o Shri Shakti Chand by (1) Managing Director, M/s Cosmo Ferrites Limited, P.O Jabli, District Solan, HP (2) Shri Vikram S/o Shri Padam Singh (contractor) C/o Cosmo Ferrities Limited, P.O Jabli, District Solan, HP w.e.f. 17.7.2008 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back-wages, service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. In nutshell, the case of the petitioner is that initially in the month of May, 2006, he was engaged as box stepping by the respondent company in the pay scale of Rs. 2250/- per month, who discharged his duties to the satisfaction of his superiors and completed 240 working days in a calendar year w.e.f. May 2006 to 17.7.2008. It is further stated that when the respondent had not adhered to the request of the petitioner, he raised a demand notice to enforce the labour law in the factory upon which w.e.f. 17.7.2008, he had orally been terminated from his service without seeking prior permission from the Labour Department as provided under Chapter-VB of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). It is also stated that in the respondent factory more than 500 workers had been working and out of these 500 workers, the respondent factory had terminated about 160 workers without assigning any reason and even the services of the petitioner had been terminated without following the provisions of the sections 25-F and 25-N of the Act. By engaging fresh persons, the respondent had also violated the provisions of section 25-G and 25-H of the Act and the claim of the petitioner for the post of subsequent vacancies had been ignored on erroneous considerations. Against this back-drop a prayer for reinstatement with seniority and continuity along-with back-wages has been made.

3. The respondent no.1 has contested the claim of the petitioner by filing reply wherein preliminary objections have been taken qua maintainability of petition as there exists no employee and employer relationship between petitioner and respondent no.1 and that the petitioner has concealed material facts. On merits, it has been asserted that the petitioner was the worker of respondent no.2 (contractor) and he was deputed by respondent no.2 to do the job of loading and unloading work with respondent no.1 for which the replying respondent had permission under the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred as to Contract Labour Act) to employ labourers and in terms of agreement executed between respondent no.1 and 2, the respondent no.2 was responsible to pay wages and comply all the statutory obligations. It is further asserted that the respondent no.1 had employed between 200-250 workers, who are on its roll and in addition to it, the respondent no.1 had also employed labourers through contractor. It is denied that 160 workers had been terminated by respondent no.1. It is also denied that the petitioner had completed 240 working days. The services of the petitioner have never been terminated by respondent no.1, hence, there is no question of violation of sections 25-F, 25-G and 25-H of the Act. The respondent no.1 prayed for the dismissal of the claim petition.

4. The respondent no.2 also contested the claim of the petitioner by filing separate reply wherein preliminary objections have been taken qua maintainability of petition and that the petitioner is gainfully employed. It is asserted that the petitioner was employed in the month of July, 2006 as casual labour by respondent no.2 and had been deputed with Cosmo Ferrities Ltd. for doing the work of loading and unloading. The petitioner was the workman of respondent no.2. It is further asserted that since the conduct and behavior of the petitioner was not good, who used to threaten other co-workers, hence, his services had been dispensed with. The respondent no.2 was employing less than 18-19 workers prior to March, 2008 and w.e.f March, 2008, the respondent

no.2 started employing more than 20 to 22 workers. The respondent no.2 in order to provide labour for loading and unloading to respondent no.1 had executed agreements as per which the entire responsibility of payment of EPF, ESI and to comply with other statutory obligation under the Labour laws was of replying respondent. It is denied that the petitioner had completed 240 days and that there is any violation of provisions of section 25-G and 25-H of the Act. The respondent no.2 also prayed for the dismissal of the claim petition.

5. No rejoinder was filed. Pleadings of the parties give rise to the following issues which were struck on 29.9.2010.

6. Whether the services of the petitioner were terminated w.e.f. 17.7.2008 by the respondents in an illegal and unjustified manner, in contravention of the provisions of Industrial Disputes Act, 1947 as alleged? . .OPP.
7. If issue no.1. is proved to what relief of service benefits the petitioner is entitled to? . .OPP.
8. Whether the claim of the petitioner is not maintainable against respondent no.1 as alleged? . .OPR-1.
9. Whether the claim of the petitioner is neither competent nor maintainable against respondent no.2 as alleged? . .OPR-2.
10. Relief.

6. The parties have led their evidence in support of the aforesaid issues.

7. To support his case, the petitioner stepped into the witness box as PW-1 and tendered his affidavit in examination-in-chief wherein he reiterated almost all the averments as stated in the claim petition. When cross-examined on behalf of respondent no.1, he admitted that no appointment letter had been issued to him by respondent no.1. He denied that he was engaged by respondent no.2 and payment was being made to him by respondent no.2. He further denied that he was deployed by respondent no.2 with respondent no.1 for loading and unloading work and EPF and other benefits were being paid by respondent no.2. He also denied that minimum wages were being paid to him by respondent no.2. He denied that he threatened the workers of respondent no.2 and there were complaints against him and his work and conduct was not good. He also denied that there was no relationship of employer and employee with respondent no.2, when cross-examined on behalf of respondent no.2.

8. In rebuttal the respondent no.1 has examined two RWs in all. RW-1 Shri Ravi Luthra, Senior Executive (HR & Admin), who tendered his affidavit Ex. RW-1 in examination-in-chief wherein he has reiterated almost all the contents of reply filed by the respondent no.1. He also tendered in evidence the copy of general power of attorney Ex. RW-2/B, the copies of agreements Ex. RW-2/C to Ex. RW-2/E. When cross-examined on behalf of respondent no.2, he stated that the petitioner was the employee of Vikram Singh and his wages were being paid through contractor. His attendance record and other records were being maintained by Shri Vikram Singh. The petitioner was never terminated by the company. When cross-examined on behalf of the petitioner, he denied that the petitioner had worked continuously w.e.f. May, 2006 till 17.7.2008 with the company.

9. RW-2 Shri Rajinder Kumar, Senior Assistant, from the office of Labour Officer, Solan has brought the copy of registration certificate dated 10.2.1988 Ex. RW-2/A and the copy of annexure attached with registration certificate Ex. RW-2/B. Respondent no.2, Shri Vikarm Singh

also appeared into the witness box as RW-3 to depose that being the labour contractor, he engaged the petitioner. The behavior of the petitioner was not good. He had brought the original wages register pertaining to the year, 2008, Ex. RW-3/A and the copy of bonus register for the year 2007 08 i.e. April to July, 2008, Ex. RW-3/B. He further stated that the petitioner had only worked from April, 2008 to July, 2008 and thereafter he left the job without any intimation. When cross examined on behalf of petitioner, he admitted that he had not annexed the bio data form of the petitioner with his reply. He denied that the petitioner was the employee of respondent no.1. He admitted that he obtained the labour license to supply the workers to respondent no.1 in the year, 2008. He stated that the petitioner was employed by him and he used to pay the wages to him (petitioner), when crossexamined on behalf of respondent no.1.

10. Besides having heard the learned counsel for the parties, I, have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3. Yes.

Issue no.4. No.

Relief. Reference answered against the petitioner and in favour of respondents per operative part of award.

Reasons for findings.

Issue no. 1 &3.

12. Being interlinked and correlated both these issues are taken up and discussed together.

13. The learned counsel for the petitioner contended that the services of the petitioner had orally been terminated by respondent no.1 without any reason despite the fact that he had completed more than 240 working days in a calendar year preceding his termination. He further contended that the petitioner was the employee of the respondent no.1 company and he cannot be terminated without following due procedure of law.

14. On the other hand, learned counsel for respondent no.1 contended that there exists no relationship of master and servant between the petitioner and respondent no.1 as the petitioner never remained the employee of the company, who was deputed by the contractor (respondent no.2) to do the work of loading and unloading with the respondent company. Whereas the learned counsel for respondent no.2 contended that the petitioner being his employee was deputed with respondent no.1 to do the work of loading and unloading and he had not completed 240 working days in twelve calendar months.

15. I have gone through the respective contentions of the learned counsel for the parties and also closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked as casual labourer for loading and unloading work with the respondent company. The case of the petitioner is to the effect that he was engaged by the

respondent no.1 on its rolls and he was the employee of respondent no.1 company. The stand which has been taken by the respondent no.1 is to the effect that the petitioner had worked as casual labourer for loading and unloading work in the company through contractor i.e respondent no.2 and the company is duly registered under the Contract Labour Act, 1970 to engage the labourers through contractor. Now, the question which arises before this Court for consideration is as to whether the petitioner was the worker of respondent no.1 or he was engaged through contractor to do the work of loading and unloading. The petitioner in his affidavit which has been tendered in evidence by way of examination-in-chief has stated that he was deputed in the packing department and was asked to perform the duties of stepping boxes and he was wrongly shown under the employment of respondent no.2. However, except for his bald statement, there is nothing on record which could go to show that he had been engaged by respondent no.1 directly. On the other hand by examining RW-2 Shri Rajinder Kumar, Senior Assistant from the office of Labour Officer, Solan the respondent no.1 has proved that a certificate regarding engagement of contract labour Ex. RW-2/A had been issued by the Registering Officer in the name of respondent no.1 and Ex. RW 2/B is the list of contractors engaged by company for providing the labourers. Its perusal goes to show that the respondent no.2 i.e Vikram Singh S/o Shri Padam Singh Village Koti, P.O Jabli, District Solan (contractor) was engaged by the respondent no.2 for providing the labourers for loading/unloading of machines and packing. Even, RW-3 Shri Vikram Singh (contractor) has deposed that the petitioner was engaged by him. Ex. RW- 3/A is the payment of wages register of contractor for the month of April 2008 to December, 2008 which shows that the name of the petitioner is figured at serial no. 3, and the wages were also paid to him by the contractor. The petitioner has also received the amount and in token thereof had appended his signatures. Ex. RW 3/B is the bonus register as per which the bonus has also been paid to him at serial no.15 by the respondent no.2 (contractor). The petitioner has failed to prove on record any appointment letter which might have been issued to him by the respondent no.1 company or any other documentary evidence which could show that he was the employee/worker of respondent no.1 company. Therefore, from the evidence, on record, it is crystal clear that the services of the petitioner had been engaged by respondent no.2 and he was further deputed with respondent no.1. Hence, in view of the entire evidence, as discussed, I have no hesitation in holding that the petitioner was engaged by the respondent no.2 contractor and had been deputed with respondent no.1 company for doing the job of loading and unloading of machines.

16. Now, the next question which arises for consideration before this Court is as to whether the services of the petitioner were terminated by the respondent no.2 in contravention of the provisions of the Act. The petitioner has stated in his claim petition that he had worked w.e.f. May, 2006 to 17.7.2008. As far as the date of engagement of the petitioner w.e.f. May, 2006 is concerned, there is nothing on record which could go to show that the petitioner was engaged w.e.f. May, 2006 as no appointment letter/documentary evidence has been placed on record by the petitioner. On the other hand, RW-3 Shri Vikram Singh categorically stated in his statement before the Court that the petitioner had only worked from April, 2008 to July, 2008. The case of the petitioner is that he had completed 240 days of service and his services have been terminated without notice and retrenchment compensation. Therefore, the onus was upon the petitioner to prove that he had completed 240 days in the preceding twelve calendar months prior to his termination. However, except for the bald statement of PW-1, no evidence has been led by the petitioner in this respect. It is a settled law that burden lies on the workman to prove that he had completed 240 days in twelve calendar months preceding his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”

17. In *AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh*, the Hon'ble Supreme Court has held that:—

“19. In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he has actually worked with the employer for not less than 240 days during the period twelve calendar months preceding the date of termination. What we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by the employer has not been contradicted. It is improbable that workman who claimed to have worked with the appellant for such a long period would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer. Therefore, we are of the opinion that the workman has failed to discharge his burden that he was in employment for 240 days during the preceding 12 months of the date of termination of his service.....”

A bare perusal of the extract of the judgment produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged upon workman adducing cogent and satisfactory evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. Hence, it cannot be said that there is any violation of sections 25-F and 25-N of the Act.

18. The other plea raised by the petitioner is that the respondent has violated the provisions of sections 25-G and 25-H of the Act by engaging fresh persons. However, no evidence has been led in this respect by the petitioner. Even, in his affidavit by way of examination-in-chief the petitioner has not uttered a single word about this fact. Therefore, in the absence of any cogent and satisfactory evidence on record, it cannot be said that the provisions of sections 25-G and 25-H are attracted to the present case and any hostile discrimination was meted out against the petitioner. 19. Therefore, keeping in view of the entire facts and circumstances of the case, I have no hesitation in holding that the termination of the petitioner was not illegal and unjustified. Hence, both these issues are answered accordingly.

Issue no.2.

20. In view of my finding on issues no.1 & 3 above, this issue becomes redundant.

Issues no. 3.

21. In support of this issue, no evidence was led by the respondent no.2. Moreover, I find nothing wrong with this petition which is perfectly maintainable against respondent no.2. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent no.2.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 26th day of December, 2015.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

28.12.2015.

Present: Shri Niranjana Verma, Advocate for petitioner.

Ms. Sneha Negi, Advocate vice counsel for respondent.

Today, also no claim petition has been filed on behalf of the petitioner. It may be pertinent to mention here that this case is being listed for filing of claim since 9.12.2014 and various opportunities have been afforded to the petitioner to file claim but the same has not been filed. Since, the petitioner has failed to file any claim despite opportunities, hence, this Court is left with no other alternative but to decide the reference on the basis of material whatsoever is available on the file. The following reference has been received from the appropriate government for adjudication:

“Whether termination of services of Smt. Saroj Bala W/o Shri Thakur Dass C/o Shri Om Dutt Sharma VPO Taksal, Tehsil Kasauli, District Solan, HP by the management of i) M/s Shivalik Agro Polly Product Ltd. plot no.1 A, Sector-3 Parwanoo, District Solan, HP 2) M/s Reekiti Banckiser India Plot no. 1, Sector-3 Parwanoo, District Solan, HP 3) M/s Trinetra service plot no. 1-A Sector-3 Parwanoo, District Solan, HP w.e.f. 20.8.2008 as alleged by the above worker without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/management(s).”

As per reference received from the appropriate government, the petitioner has alleged her termination w.e.f. 20.8.2008 without complying with the provisions of Industrial Disputes Act 1947, to be illegal and unjustified but, the petitioner has failed to file any claim in support thereof. Moreover, the petitioner has also failed to lead any evidence before this Court in order to show that her services have been illegally terminated by the respondent without complying with the provisions of the Industrial Disputes Act, 1947. Hence, in the absence of any claim petition/evidence on record, the reference is answered against the petitioner. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

28.12.2015.

(SUSHIL KUKREJA),
Presiding Judge
Labour Court, Shimla.

28.12.2015.**Present:** Shri Niranjana Verma, Advocate for petitioner.

Shri Rupesh Sharma, Advocate vice counsel for respondent.

Today, also no claim petition has been filed on behalf of the petitioner. It may be pertinent to mention here that this case is being listed for filing of claim since 24.9.2014 and various opportunities have been afforded to the petitioner to file claim but the same has not been filed. Since, the petitioner has failed to file any claim despite opportunities, hence, this Court is left with no other alternative but to decide the reference on the basis of material whatsoever is available on the file. The following reference has been received from the appropriate government for adjudication:

“Whether termination of services of Shri Balkar Singh S/o Shri Prem Singh C/o Shri Om Dutt Sharma VPO Taksal, Tehsil Kasauli, District Solan, HP by the management of M/s Allied Nippon, Plot No. 43, 4, 45 Industrial Area, Sector-5 Parwanoo, District Solan, HP w.e.f. 28.11.2009 without complying the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above management?”

As per reference received from the appropriate government, the petitioner has alleged his termination w.e.f. 28.11.2009 without complying with the provisions of Industrial Disputes Act 1947, to be illegal and unjustified but, the petitioner has failed to file any claim in support thereof. Moreover, the petitioner has also failed to lead any evidence before this Court in order to show that his services have been illegally terminated by the respondent without complying with the provisions of the Industrial Disputes Act, 1947. Hence, in the absence of any claim petition/evidence on record, the reference is answered against the petitioner. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

28.12.2015.

(SUSHIL KUKREJA),
Presiding Judge
Labour Court, Shimla.

ब अदालत कार्यकारी दण्डाधिकारी, जुब्बल, जिला शिमला, हि0 प्र0

रमा कान्ता पुत्री श्री बहादुर सिंह सौहटा, निवासी ग्राम खौणी तहसील जुब्बल, जिला शिमला, हि0 प्र0
... प्रार्थी ।

बनाम

आम जनता

विषय.—ग्राम पंचायत सरस्वतीनगर के जन्म पंजीकरण रजिस्टर में प्रार्थी की जन्म तिथि दर्ज करने बारे प्रार्थना पत्र ।

प्रार्थिनी रमाकान्ता पुत्री श्री बहादुर सिंह, निवासी ग्राम खौणी, तहसील जुब्बल ने इस कार्यालय में एक प्रार्थना पत्र प्रस्तुत किया है जिसमें लिखा है कि प्रार्थिनी की जन्म तिथि 21-8-1958 है जो सही व दुरुस्त है परन्तु प्रार्थिनी की जन्म तिथि का इन्द्राज ग्राम पंचायत सरस्वतीनगर के रजिस्टर में दर्ज नहीं है। प्रार्थिनी अब अपनी जन्म तिथि का इन्द्राज ग्राम पंचायत सरस्वतीनगर के रजिस्टर में करवाना चाहती है जिसके लिए प्रार्थना पत्र प्रस्तुत किया है। प्रार्थन-पत्र के साथ शपथ पत्र भी प्रस्तुत किया है।

अतः सर्वसाधारण को इस इशतहार के माध्यम से सूचित किया जाता है कि यदि किसी भी व्यक्ति को जन्म तिथि का पंजीकरण करने में कोई आपत्ति हो तो वह अपना एतराज दिनांक 30-01-2016 को प्रातः 10 बजे इस कार्यालय में पेश कर सकता है। कोई भी एतराज न आने की सूरत में ग्राम पंचायत सरस्वतीनगर को जन्म का पंजीकरण करने के आदेश पारित किए जाएंगे।

आज दिनांक 14-01-2016 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/-
कार्यकारी दण्डाधिकारी,
जुब्बल।

ब अदालत श्री गुरमीत जी० नेगी, कार्यकारी दण्डाधिकारी, तहसील रोहडू, जिला शिमला, हि० प्र०

श्री श्रेय रमलोटा पुत्र श्री कर्ण रमोलटा, निवासी बशटाड़ी, तहसील रोहडू, जिला शिमला, हि० प्र०
प्रार्थी।

बनाम

आम जनता

उनवान मुकदमा.—दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत।

इस कार्यालय में श्री कर्ण रमोलटा पुत्र श्री ईश्वर सिंह, निवासी बशटाड़ी, तहसील रोहडू, जिला शिमला, हि० प्र० ने प्रार्थना-पत्र गुजार कर निवेदन किया है कि उसके पुत्र श्रेय रमोलटा का जन्म दिनांक 19-06-1996 को हुआ है परन्तु अज्ञानतावश उसका नाम व जन्म तिथि ग्राम पंचायत कुटाड़ा के जन्म रजिस्टर में आज तक पंजीकृत नहीं किया गया है तथा उसके नाम व जन्म तिथि को दर्ज करने के आदेश ग्राम पंचायत कुटाड़ा को दिये जावे।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी को भी उपरोक्त का नाम व जन्म तिथि ग्राम पंचायत कुटाड़ा में दर्ज करने में किसी भी प्रकार का एतराज व उजर हो तो वे दिनांक 30-01-2016 को असालतन व वकालतन हाजर होकर लिखित व मौखिक प्रस्तुत करें। यदि उक्त तारीख तक कोई उजर/एतराज प्रस्तुत नहीं हुआ तो यह समझा जावेगा कि प्रार्थी का नाम व जन्म तिथि ग्राम पंचायत में दर्ज करने हेतु कोई आपत्ति नहीं है तथा नाम व जन्म ग्राम पंचायत कुटाड़ा में दर्ज करने के आदेश पारित कर दिये जाएंगे।

आज दिनांक 11-01-2016 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर

गुरमीत जी० नेगी,
कार्यकारी दण्डाधिकारी,
रोहडू, जिला शिमला (हि० प्र०)।

ब अदालत कार्यकारी दण्डाधिकारी, जुब्बल, जिला शिमला, हि0 प्र0

श्री जयदेव मान्ता पुत्र श्री ईश्वर सिंह मान्ता, निवासी कायना, तहसील जुब्बल, जिला शिमला, हि0 प्र0
प्रार्थी।

बनाम

आम जनता

विषय.—ग्राम पंचायत कोट कायना के रिकार्ड में जन्म तिथि का पंजीकरण करने बारे।

श्री जयदेव मान्ता पुत्र श्री ईश्वर सिंह मान्ता, निवासी कायना, तहसील जुब्बल ने इस कार्यालय में एक प्रार्थना पत्र मय शपथ पत्र प्रस्तुत किया है जिसमें लिखा है कि उसके पुत्रों शुभम मान्ता व शुशान मान्ता की जन्म तिथियां क्रमशः 2-8-1994 तथा 2-10-1996 है परन्तु जन्म का पंजीकरण ग्राम पंचायत कोट कायना के रिकार्ड में नहीं किया गया है तथा अब पंजीकरण बारे निवेदन किया है। प्रार्थी ने पंजीकरण से सम्बन्धित सभी आवश्यक औपचारिकताएं पूरी कर रखी है।

अतः सर्वसाधारण को इस इशतहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी के पुत्रों की जन्म तिथियों के पंजीकरण से सम्बन्धित कोई भी एतराज हो तो वह अपना एतराज दिनांक 30-01-2016 को प्रातः 10 बजे इस कार्यालय में प्रस्तुत कर सकता है। निर्धारित तिथि के पश्चात कोई भी एतराज नहीं सुने जाएंगे तथा प्रार्थी के पुत्रों की जन्म तिथियों के पंजीकरण के आदेश ग्राम पंचायत कोट कायना को पारित कर दिये जाएंगे।

आज दिनांक 11-01-2016 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
जुब्बल, जिला शिमला।

ब अदालत कार्यकारी दण्डाधिकारी, जुब्बल, जिला शिमला, हि0 प्र0

श्री देविन्द्र सिंह मान्ता पुत्र श्री ईश्वर सिंह मान्ता, निवासी कायना, तहसील जुब्बल, जिला शिमला,
हि0 प्र0 प्रार्थी।

बनाम

आम जनता

विषय.—ग्राम पंचायत कोट कायना के रिकार्ड में जन्म तिथि का पंजीकरण करने बारे।

श्री देविन्द्र सिंह मान्ता पुत्र श्री ईश्वर सिंह मान्ता, निवासी कायना, तहसील जुब्बल ने एक प्रार्थना पत्र मय शपथ पत्र प्रस्तुत किया है कि उसकी पुत्री मन्मत मान्ता की जन्म तिथि 26-3-1998 है परन्तु जन्म का पंजीकरण ग्राम पंचायत कोट कायना के रिकार्ड में नहीं है तथा अब पंजीकरण बारे निवेदन किया है। पंजीकरण से सम्बन्धित प्रार्थी ने सभी आवश्यक औपचारिकताएं पूरी कर रखी है।

अतः सर्वसाधारण को इस इशतहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी की पुत्री की जन्म तिथि का पंजीकरण ग्राम पंचायत कोट कायना में दर्ज करने बारे कोई एतराज हो तो वह अपना एतराज दिनांक 30-01-2016 को प्रातः 10 बजे इस कार्यालय में प्रस्तुत कर सकता है। निर्धारित तिथि के पश्चात कोई भी एतराज नहीं सुने जाएंगे तथा प्रार्थी की पुत्री की जन्म तिथि के पंजीकरण के आदेश ग्राम पंचायत कोट कायना को पारित किये जाएंगे।

आज दिनांक 11-01-2016 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
जुब्बल, जिला शिमला।

सहायक समाहर्ता द्वितीय श्रेणी, उप-तहसील हरिपुरधार, जिला सिरमौर, हि0 प्र0

मिसल नं0 5/2015

श्रीमती कल्पना देवी पुत्री श्री कौशिया, निवासी ग्राम लालग, डा0 बडौल, उप-तहसील हरिपुरधार, जिला सिरमौर (हि0प्र0) प्रार्थी।

बनाम

आम जनता/सगे सम्बन्धी

प्रतिवादीगण।

दरखास्त बराये सेहत नाम राजस्व रिकार्ड मौजा बडौल, उप-तहसील हरिपुरधार, जिला सिरमौर (हि0 प्र0)

ईशतहार

प्रार्थी उपरोक्त ने अदालत हजा में एक दरखास्त गुजारी है कि उसका नाम कल्पना देवी है जो कि पंचायत रिकार्ड, आधार कार्ड व शिक्षा विभाग के रिकार्ड में सही दर्ज है परन्तु राजस्व रिकार्ड बडौल बाबत खाता खतौनी नं0 165/451 ता 455 में उसका नाम कनको पुत्री कौशिया दर्ज है जो गलत दर्ज है तथा जिसकी वह राजस्व रिकार्ड मौजा बडौल सागंना में दुरुस्ती करवाना चाहती है।

अतः इस अदालती ईशतहार के माध्यम से आम जनता/सगे सम्बन्धियों को सूचित किया जाता है कि अगर उन्हें सायल का नाम कागजात माल में मौजा उपरोक्त में दुरुस्त करने बारे कोई उजर एवं एतराज हो तो वह दिनांक 30-01-2016 को अदालत हजा में हाजिर होकर उजर एवं एतराज प्रस्तुत कर सकता है। बाद गुजरने मियाद कोई उजर काबले समायत न होगा तथा नियमानुसार आवश्यक कार्यवाही अमल में लाई जाएगी।

आज दिनांक 18-12-2015 को हमारे हस्ताक्षर एवं मोहर अदालत से जारी किया गया।

मोहर।

नरोत्तम लाल गोड,
सहायक समाहर्ता द्वितीय श्रेणी,,
उप-तहसील हरिपुरधार, जिला सिरमौर (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी (तहसीलदार) बद्दी, जिला सोलन, हि0 प्र0

मुकद्दमा नं0 : 21/2015

तारीख रजुआ : 02-12-2015

किस्म मुकद्दमा : इन्द्राज विवाह पंजीकरण

श्री सुरिन्द्र पुत्र श्री मदन लाल व श्रीमती मीना रानी पत्नी श्री सुरिन्द्र, निवासीयान ग्राम व डा0 बरोटीवाला, तहसील बद्दी, जिला सोलन, हि0 प्र0 वादी।

बनाम

आम जनता बजरिया ग्राम पंचायत बरोटीवाला, तहसील बद्दी, जिला सोलन, हि0 प्र0

प्रतिवादी।

दावा अन्तर्गत जेर धारा 8(4) दावा अन्तर्गत जेर अधिनियम, 1996 सुरिन्द्र पुत्र श्री मदन लाल व मीना रानी पत्नी श्री सुरिन्द्र, निवासी ग्राम बरोटीवाला, तहसील बद्दी, जिला सोलन, हि0 प्र0।

इश्तहार बनाम आम जनता

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थी ने प्रार्थना पत्र मय ब्यान हल्फियान प्रस्तुत कर निवेदन किया है कि उसकी शादी दिनांक 02-11-2012 को श्रीमती मीना रानी पुत्री श्री दुनी चन्द, निवासी ग्राम श्यामपुर, डा0 रामपुर कलां, तहसील व जिला मोहाली पंजाब के साथ हिन्दु धर्म व रीति-रिवाज के अनुसार सम्पन्न हुई है। जिसका प्रत्यार्थीगण व उनके परिवार वाले ग्राम पंचायत बरोटीवाला, तहसील बद्दी, जिला सोलन के रिकार्ड में शादी का इन्द्राज नहीं करवा सके थे। जिसका अब वह ग्राम पंचायत रिकार्ड में इन्द्राज करवाना चाहते हैं। अतः जनता हर आम/खास को बजरिया इश्तहार सूचित किया जाता है कि श्री सुरिन्द्र पुत्र श्री मदन लाल निवासी ग्राम व डा0 बरोटीवाला, तहसील बद्दी, जिला सोलन, हि0 प्र0 व श्रीमती मीना रानी पुत्री श्री दुनी चन्द, निवासी ग्राम श्यामपुर, डा0 रामपुर कलां, तहसील व जिला मोहाली पंजाब की शादी का इन्द्राज ग्राम पंचायत बरोटीवाला के रिकार्ड में दर्ज होने बारे अगर किसी को कोई उजर व एतराज हो तो वह दिनांक 29-01-2016 तक इस न्यायालय में उपस्थित आकर एतराज प्रस्तुत कर सकता है अन्यथा दिनांक 29-01-2016 को बाद दोपहर उपरोक्त द्वारा प्रस्तुत किये गये ब्यान हल्फियान के आधार पर उक्त शादी के पंजीकरण हेतु आगामी कार्यवाही अमल में लाई जावेगी तथा बाद गुजरने मियाद कोई भी एतराज काबले समायत न होगा।

आज दिनांक 04-01-2016 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
बद्दी, जिला सोलन, हि0 प्र0।